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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/649,973 | 08/29/2000 | Norbert George Vogl | YOR920000532US1 | 9168 |

7590 09/17/2007
HARRINGTON & SMITH, LLP
4 Research Drive
Shelton, CT 06484-6212

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| EXAMINER |
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BAROT, BHARAT

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| ART UNIT | PAPER NUMBER |
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2155

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| MAIL DATE | DELIVERY MODE |
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09/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|--|---------------------------------------|-------------------------------------|--|
| <p align="center">Advisory Action Before the Filing of an Appeal Brief</p> | <p>Application No. 09/649,973</p> | <p>Applicant(s) VOGL ET AL.</p> | |
| | <p>Examiner Bharat N. Barot</p> | <p>Art Unit 2155</p> | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: NONE.
Claim(s) rejected: 1-19, 24, 25, 27 and 28.
Claim(s) withdrawn from consideration: 20-22.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____


BHARAT BAROT
PRIMARY EXAMINER

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Continuation of 5. Applicant's reply has overcome the following rejection(s): non-statutory obviousness-type double patenting because applicant filed terminal disclaimer with the response to final office action.

Continuation of 11. does NOT place the application in condition for allowance because: applicant's arguments with respect to claims 1-19,24,25,27 and 28 toward final rejection filed on September 04, 2007 have been considered but they are not deemed to be persuasive and final rejection is respectfully maintained as set forth in the last office action mailed on July 03 2007.

Crisler et al teach a method of doing business over a network (see abstract; figure 1; and column 2 line 50 to column 3 line 49), comprising: receiving a request for transmitting digital information, the request comprising an identification of a user and transmission constraints including a start time and an end time (request for N-time slots having time after transmission begin and time at transmission completed), the digital information corresponding to a number of packets (figures 2-3; column 3 line 50 to column 4 line 28; and column 5 lines 8-55); determining an estimated time required to transmit the digital information based on the number of packets and a network speed; scheduling a transmit time for the digital information (figures 2-3; column 4 lines 29-57; and column 5 line 44 to column 6 line 7); accepting the digital information for transmission only if the estimated time required to transmit is less than or equal to a difference between the transmit time and the end time (N-time slots presently available); and in response to the digital information being accepted for transmission, transmitting the digital information using the network after the start time and prior to the end time (figures 2-3; column 4 line 29 to column 5 line 7; and column 6 lines 8-27).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Crisler et al stated above in the method of Takamoto et al for doing business over a network as stated above because it would have optimized network performance and increased system efficiency by scheduling a transmit time for the digital information.

Rodriguez et al teach that determining a cost for transmitting the digital information (VOD service) (figure 4; and column 13 lines 28-60); accepting the digital information for transmission if the determined cost is less than or equal to a maximum cost associated with the user (column 14 lines 37-52); and in response to the digital information being accepted for transmission, billing the determined cost to an account associated with the user (figure 4; and column 13 lines 38-60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Rodriguez et al stated above in the method of Takamoto et al and Crisler et al for doing business over a network as stated above because it would have optimized network performance, increased system efficiency by scheduling a transmit time for the digital information, and improved system management to determine the cost of network usage. As a result, the combination of Takamoto, Crisler, and Rodriguez teaches the claimed invention.